

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **GARY W. HALL, M.D.,**

4 Holder of License No. 12977  
5 For the Practice of Allopathic Medicine  
6 In the State of Arizona.

Board Case No. 08A-12977-MDX

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER**

7 On February 4, 2009, this matter came before the Arizona Medical Board ("Board")  
8 for oral argument and consideration of the Administrative Law Judge (ALJ) Brian Brendan  
9 Tully's proposed Findings of Fact and Conclusions of Law and Recommended Order.  
10 Assistant Attorney General Jennifer Boucek, represented the State. Chris Munns,  
11 Assistant Attorney General with the Solicitor General's Section of the Attorney General's  
12 Office, was present and available to provide independent legal advice to the Board.

13 The Board, having considered the ALJ's decision and the entire record in this  
14 matter, hereby issues the following Findings of Fact, Conclusions of Law and Order.

15  
16 **FINDINGS OF FACT**

- 17 1. The Arizona Medical Board ("Board") is the authority for licensing and regulating  
18 the practice of allopathic medicine in the State of Arizona.  
19 2. Gary W. Hall, M.D. ("Respondent") is the holder of License No. 12977 issued by  
20 the Board for the practice of allopathic medicine in Arizona.  
21 3. Respondent is an Ophthalmologist.  
22 4. The Board opened Case No. MD-05-1133A after it received an anonymous  
23 complaint that Respondent had been observed performing minor surgery in his  
24 office.  
25 5. On or about April 13, 2005, Respondent entered into a Consent Agreement and  
Order for Probation and Practice Restriction ("Consent Agreement") with the Board

1 in Case Nos. MD-99-0838, MD-01-0145, MD-01-0456, MD-01-0569, MD-03-0327,  
2 and, MD-03-0920.

3 6. Pursuant to the terms of the Consent Agreement, Respondent was placed on  
4 probation for a period of five years.

5 7. The Board ordered that Respondent be "permanently prohibited from performing  
6 or assisting in surgery of any kind." The Board's Order required that "Respondent  
7 must refer any patient who may be a surgical candidate to another qualified  
8 surgeon."

9 8. In the present Complaint, the Board alleges that since the Consent Agreement  
10 Respondent has performed incisions and drainage of chalazions and removal of  
11 loose sutures in his minor procedures rooms. The Board alleges that such  
12 treatment is surgery, in violation of the Consent Agreement. Respondent contends  
13 that such treatment is not surgery.

14 9. By letter dated January 14, 2006 to the Board, Respondent responded to the  
15 anonymous complaint.

16 10. By letter dated March 30, 2006 to then Board staff Mark Nanney, M.D., J.D., Alan  
17 Geller, M.D. responded to a recent telephone call with Dr. Nanney. Dr. Geller  
18 expressed the following medical opinion:

19 I would certainly agree that the incision and drainage of a chalazion  
20 does in fact represent surgery by any reasonable definition. It is, to  
21 be sure, minor surgery with very low risk of visual damage if done  
22 appropriately, but there can be no question that it qualifies as  
23 surgery.

24 11. Dr. Geller did not testify at the hearing in the present case.

25 12. The American Medical Associations' CPT 2007 Surgery/Eye and Ocular Adnexa  
lists the following relevant codes: 67800 Excision of chalazion, single; 67801  
multiple, same lid; 67805 multiple, different lids; and 67808 under general  
anesthesia and/or requiring hospitalization, single or multiple.

13. To support his position, Respondent introduced into evidence the Ophthalmic  
Mutual Insurance Company Liability Insurance Policy, revised effective December  
1, 2000 ("Policy").

1 14. Page 22 of the Policy provides for the following endorsement:

2 **OMC121 – Limited Surgery Exclusion**

3  
4 It is hereby understood and agreed that coverage applies only to  
5 claims arising from the practice of medical ophthalmology and the  
6 specified surgical procedures listed below. No coverage is provided  
7 for other surgical procedures.

8 Coverage applies to medical ophthalmology and the following  
9 procedures only: removal of sutures, epilation, tear duct probing or  
10 irrigation done under local anesthetic, removal of superficial foreign  
11 bodies from the cornea or conjunctiva, repair of minor lid lacerations  
12 limited to the skin and/or muscle, repair of minor conjunctival  
13 lacerations, biopsy of lid tumors, biopsy of the conjunctiva, removal  
14 of cysts and other non-cancerous skin lesions and tumors, removal  
15 of corneal epithelium, incision and drainage, punctual closure,  
16 papillomas, chalzions [sic], non-incisional entropion or ectropion  
17 repair, laser capsulotomy, laser iridotomy, laser iridoplasty, laser  
18 trabeculoplasty, wedge resection for non-cancerous tumors, and  
19 assisting in surgery.

20 15. Respondent contends that the following Policy endorsement supports his position:

21 It is hereby understood and agreed that coverage applies on to  
22 claims arising from the practice of medical ophthalmology and the  
23 specified office procedures listed below. No coverage is provided for  
24 surgical procedures, including surgical assisting.

25 Coverage applies to medical ophthalmology and the following  
procedures only: removal of sutures, epilation, tear duct probing or  
irrigation done under local anesthetic, removal of superficial foreign  
bodies from the cornea or conjunctiva, repair of minor lid lacerations  
limited to the skin and/or muscle, repair of minor conjunctival  
lacerations, biopsy of lid tumors, biopsy of the conjunctiva, removal  
of cysts and other non-cancerous skin lesions and tumors, removal  
of corneal epithelium, incision and drainage, punctual closure,  
papillomas, chalzions [sic], non-incisional entropion or ectropion  
repair.

16. The Policy endorsements described above are found to address insurance  
coverage between the insurer and the insured physician. Excision of chalazion

- 1 and incision and drainage are listed as both "specified surgical procedures" under  
2 the Limited Surgery Exclusion and as "specified office procedures" under the  
3 Surgical Exclusion.
- 4 17. Neither the Board nor Respondent presented a physician's testimony at the  
5 hearing.
- 6 18. The evidence of record supports a finding that incision and drainage, and the  
7 excision of chalazion is surgery which can be performed with local or general  
8 anesthesia depending upon the status of the patient's condition.
- 9 19. Respondent violated the provisions of the previous Board Order that permanently  
10 prohibiting him from performing or assisting in surgery.
- 11 20. In addition to the present disciplinary matter and the prior Consent Agreement, the  
12 following is Respondent's prior Board history:
- 13 6/22/00 Advisory Letter – Potential misdiagnosis of glaucoma  
14 associated with aggressive treatment.
- 15 5/27/99 Decree of Censure with three year probation and \$15,000.00  
16 Civil Penalty – Unprofessional Conduct (Permanent ban on RK  
17 surgery; effective 11/21/99, no Lasik surgery until completing Lasik  
18 CME; random chart reviews). 10/10/99 – Lasik CME completed.
- 19 1/23/97 Letter of Reprimand – Unprofessional Conduct  
20 (inappropriate advertising; fees for services not rendered/fee  
21 splitting; failure to furnish information to the Board; misrepresenting  
22 Board certification).
- 23 1/19/96 Probation three years – Unprofessional Conduct (RK to be  
24 done within ISRS guidelines; informed patient consent, including  
25 post-op care; community service; \$10,000.00 reimbursement)  
1/19/99 Probation terminated.
- 10/16/95 Advisory Letter – Inappropriate advertising.
- 07/11/94 Advisory Letter – Inappropriate coding.
- 04/07/92. Advisory Letter – Recommendation of unnecessary  
cataract surgery for an 85-year old patient.
- 10/10/90 Advisory Letter – Failure to appropriately document  
indications of visual impairment prior to performing surgery.

06/24/87 Advisory Letter – Advertisements referring to no-cost cataract surgery were misleading.

### **CONCLUSIONS OF LAW**

1. The Board has jurisdiction over Respondent and the subject matter in this case.
2. Pursuant to A.R.S. § 41-1092.07(G)(2) and A.A.C. R2-19-119(B), the Board has the burden of proof in this matter. The standard of proof is preponderance of the evidence. A.A.C. R2-19-119(A).
3. Respondent violated the provisions of A.R.S. § 32-1401(27)(r) by practicing surgery as described in the above Findings in violation of the Consent Agreement which permanently prohibited Respondent for performing or assisting in surgery.
4. Pursuant to A.R.S. § 32-1451(K), Respondent should be assessed a civil penalty in the amount of \$10,000.00 for the above-described violation.
5. Pursuant to A.R.S. § 32-1451(M), Respondent should be assessed the costs of the formal hearing.

### **ORDER**

Based in the foregoing, the Board orders that Respondent's License No. 12977 shall be placed on probation for an additional period of ten years in Case No. MD-05-1133(A), subject to the terms of probation set forth in the Consent Agreement. The probation in this matter shall run consecutively with Respondent's present probation under the Consent Agreement.

Respondent is assessed a civil penalty in the amount of \$10,000.00 for the above-described statutory violation in Case No. MD-05-1133(A). The said civil penalty shall be paid by Respondent to the Board within 45 days from the effective date of the Order entered in Case No. MD-05-1133(A), unless that deadline date is extended by the Board or its Executive Director.

Respondent is assessed the costs of the formal hearing. Those costs shall be paid on or about 45 days from the date the Board issues an invoice for those costs, unless that deadline date is extended by the Board or its Executive Director.

1  
2 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

3 Respondent is hereby notified that he has the right to petition for a rehearing or  
4 review. The petition for rehearing or review must be filed with the Board's Executive  
5 Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The  
6 petition for rehearing or review must set forth legally sufficient reasons for granting a  
7 rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days  
8 after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not  
9 filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to  
10 Respondent.

11 Respondent is further notified that the filing of a motion for rehearing or review is  
12 required to preserve any rights of appeal to the Superior Court.

13 DATED this 5<sup>TH</sup> day of February, 2009.



THE ARIZONA MEDICAL BOARD

By 

Lisa S. Wynn  
Executive Director

19 ORIGINAL of the foregoing filed this  
20 5<sup>th</sup> day of February, 2009 with:

21 Arizona Medical Board  
22 9545 East Doubletree Ranch Road  
23 Scottsdale, Arizona 85258

24 COPY OF THE FOREGOING FILED  
25 this 5<sup>th</sup> day of February, 2009 with:

Cliff J. Vanell, Director  
Office of Administrative Hearings  
1400 W. Washington, Ste 101  
Phoenix, AZ 85007

1 Executed copy of the foregoing  
2 mailed by U.S. Mail this  
3 5th day of February, 2009 to:

4 Gary W. Hall, M.D.  
5 Address of Record

6 Peter M. Wittekind  
7 Kent & Wittekind PC  
8 111 W. Monroe Suite 1000  
9 Phoenix, AZ 85003  
10 Attorneys for Respondent

11 Jennifer Boucek  
12 Assistant Attorney General  
13 Office of the Attorney General  
14 CIV/LES  
15 1275 W. Washington  
16 Phoenix, AZ 85007

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1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **GARY W. HALL, M.D.,**

4 Holder of License No. **12977**  
5 For the Practice of Allopathic Medicine  
6 In the State of Arizona.

Board Case No. MD-08A-12977-MDX

**ORDER DENYING PETITION FOR  
REHEARING OR REVIEW**

7  
8 At its public meeting on April 1-2, 2009, the Arizona Medical Board ("Board") considered  
9 a Petition for Rehearing or Review filed by Gary W. Hall, M.D. ("Respondent").  
10 Respondent requested the Board rehear or review its February 5, 2009, Findings of Fact,  
11 Conclusions of Law and Order for Probation and Civil Penalties in Case no. MD-08A-  
12 12977-MDX. The Board voted to deny the Respondent's Petition for Rehearing or Review  
13 upon due consideration of the facts and law applicable to this matter.

14 **ORDER**

15 IT IS HEREBY ORDERED that:

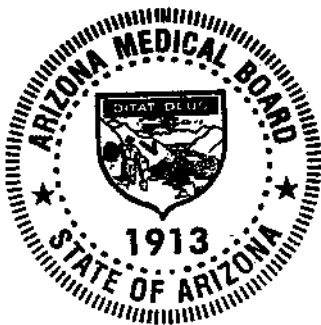
16 Respondent's Petition for Rehearing or Review is denied. The Board's February  
17 5, 2009, Findings of Fact, Conclusions of Law and Order for Probation and Civil Penalties  
18 in Case no. MD-08A-12977-MDX is effective and constitutes the Board's final  
19 administrative order.  
20

21 **RIGHT TO APPEAL TO SUPERIOR COURT**

22 Respondent is hereby notified that he has exhausted his administrative remedies.  
23 Respondent is advised that an appeal to Superior Court in Maricopa County may be  
24 taken from this decision pursuant to title 12, chapter 7, article 6 of Arizona Revised  
25 Statutes.



1 DATED this 7<sup>TH</sup> day of April, 2009.



THE ARIZONA MEDICAL BOARD

By   
LISA WYNN  
Executive Director

7 ORIGINAL of the foregoing filed this  
8 8<sup>th</sup> day of April, 2009 with:

9 Arizona Medical Board  
9545 East Doubletree Ranch Road  
10 Scottsdale, Arizona 85258

11 COPY OF THE FOREGOING FILED  
this 8<sup>th</sup> day of April, 2009 with:

12 Executed copy of the foregoing  
13 mailed by U.S. Mail this  
8<sup>th</sup> day of April, 2009 to:

14 Gary W. Hall, M.D.  
Address of Record

15 Peter M. Wittekind  
16 Kent & Wittekind PC  
111 W. Monroe Suite 1000  
17 Phoenix, AZ 85003  
Attorneys for Respondent

18 Jennifer Boucek  
19 Assistant Attorney General  
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21 Phoenix, AZ 85007

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